TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 161

NATIONAL METROPOLITAN BANK, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JUNE 14, 1944.

CERTIORARI GRANTED OCTOBER 9, 1944.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Case No. 8562

Appendix to Appellant's Brief

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 16,716

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE NATIONAL METROPOLITAN BANK, a Corporation, 613 15th Street, N. W., Washington, D. C., Defendant

COMPLAINT FOR RECOVERY OF MONEY PAID ON FORGED ENDORSEMENTS—Filed August 11, 1942

First Count

Paragraph 1. The plaintiff, the United States of America, a corporation sovereign, by its attorney, Edward M. Curran, United States Attorney for the District of Columbia, brings this proceeding against the National Metropolitan Bank of Washington, D. C., a corporation engaged in the business of banking in the District of Columbia, and states that defendant owes the plaintiff the sum of Eighteen Thousand, Sixty Dollars and Eighty-three Cents ($18,060.83), paid by the plaintiff to the defendant under a mistake of fact, on the dates and under the circumstances hereinafter mentioned.

Paragraph 2. Certain checks, photostatic copies of which are annexed hereto and marked Exhibits A-1 to A-144 inclusive, were drawn on the Treasurer of the United States by officers or agents of the United States duly authorized to draw such checks. Each of said checks was issued and [fol. 2] thereafter was endorsed with a signature purporting to be the true and genuine signature of the payee

thereof, but said signature was in fact, false, forged and counterfeit.

Paragraph 3. Each check, after said false, forged and counterfeit endorsement had been placed thereon, was endorsed by the defendant and presented by defendant for payment to the Treasurer of the United States at Washington, D. C., which said Treasurer, believing said false, forged and counterfeit endorsement to be the true and genuine signature of the payee named on the face of the check, paid to the defendant the amount thereof. Each of the said checks, so endorsed and so paid, is listed in Exhibit B annexed hereto and incorporated herein according to number, amount and date of payment.

Wherefore, the plaintiff demands judgment against the defendant for the amounts so paid by the plaintiff to the defendant on the said checks, in the total amount of Eighteen Thousand, Sixty Dollars and Eighty-three Cents, ($18,060.83) together with interest on the amounts paid on the said checks at the rate of 6% per annum from date of each payment, as more specifically set out in Exhibit B, besides costs of this suit.

Second Count

Paragraph 1. And for further complaint, the said plaintiff, the United States of America adopts by reference, and herein incorporates, the averments of Paragraph 2 of the First Count of this action, and states that each check, after said false, forged and counterfeit endorsement had been placed thereon, was endorsed by the defendant, the National Metropolitan Bank of Washington, D. C., a corporation engaged in the business of banking in the District of Columbia in the manner and form set out in Exhibits A-1 to A-144 inclusive, and that the defendant did thereby guarantee the genuineness of the prior endorsements upon the said checks, including the endorsements of the payees named on the face [fol. 3] of the said checks; that the said guaranties were made as part of the said endorsements in order to induce the plaintiff to pay the amounts of the said checks to the defendant; that the defendant presented the said checks for payment to the said Treasurer of the United States at Washington, D. C. which said Treasurer, relying upon the guaranty of the defendant as to the validity of the endorsements upon the said checks, and solely because thereof, paid

to the defendant the amounts of the said checks on the dates set out in Exhibit B annexed hereto.

Wherefore, the plaintiff demands judgment against the defendant for the amounts so paid by the plaintiff to the defendant on the said checks, in the total amount of Eighteen Thousand, Sixty Dollars and Eighty-three Cents ($18,060.83), together with interest on the amounts paid on the said checks at the rate of 6% per annum from the date of each payment, besides costs of this case.

Edward M. Curran, United States Attorney; Grace B. Stiles, Assistant United States Attorney, Attorneys for Plaintiff.

EXHIBIT "B" TO COMPLAINT

Exhibit No.	Check No.	Payee	Amount	Date of Payment
A-1	9,975	C. B. Cates	$172.60	Jul. 14, 1936
A-2	10,630	C. R. Wallace	96.00	Jul. 27, 1936
A-3	11,255	H. M. Peter	96.00	Aug. 7, 1936
A-4	11,264	C. R. Wallace	131.84	Aug. 11, 1936.
A-5	11,375	H. M. Peter	147.50	Aug. 18, 1936
A-6	12,373	C. B. Cates	88.16	Sept. 12, 1936
A-7	12,485	C. R. Wallace	147.50	Sept. 18, 1936
A-8	12,977	C. R. Wallace	131.84	Oct. 8, 1936
A-9	13,467	C. R. Wallace	96.00	Oct. 13, 1936
A-10	14,073	C. B. Cates	96.00	Oct. 22, 1936
[fol. 4]				
A-11	14,386	H. M. Peter	162.22	Nov. 4, 1936
A-12	15,004	C. R. Wallace	105.76	Nov. 10, 1936
A-13	15,252	C. R. Wallace	131.84	Nov. 18, 1936
A-14	15,392	B. Dubel	96.00	Nov. 23, 1936
A-15	15,610	F. A. Hart	105.76	Nov. 28, 1936
A-16	15,715	B. Dubel	105.76	Nov. 28, 1936
A-17	15,832	C. R. Wallace	96.00	Dec. 9, 1936
A-18	15,921	F. A. Hart	96.00	Dec. 15, 1936
A-19	15,925	C. B. Cates	96.00	Dec. 15, 1936
A-20	16,190	B. Dubel	96.00	Dec. 23, 1936
A-21	16,476	C. R. Wallace	147.50	Dec. 31, 1936
A-22	16,477	C. B. Cates	105.76	Jan. 12, 1937
A-23	16,478	H. M. Peter	147.50	Jan. 6, 1937
A-24	16,479	B. Dubel	105.76	Dec. 31, 1936
A-25	16,942	B. Dubel	96.00	Jan. 14, 1937
A-26	17,140	H. M. Peter	96.00	Jan. 18, 1937
A-27	17,811	F. A. Hart	147.50	Feb. 3, 1937
A-28	18,180	H. M. Peter	131.84	Feb. 17, 1937
A-29	18,181	C. R. Wallace	96.00	Feb. 17, 1937

Exhibit No.	Check No.	Payee	Amount	Date of Payment
A-30	18,256	C. B. Cates	96.00	Feb. 20, 1937
A-31	18,561	B. Dubel	105.76	Mar. 10, 1937
A-32	18,565	C. R. Wallace	105.76	Feb. 27, 1937
A-33	18,928	C. R. Wallace	147.50	Mar. 17, 1937
A-34	18,929	H. M. Peter	147.50	Mar. 17, 1937
A-35	18,989	B. Dubel	96.00	Mar. 17, 1937
A-36	18,990	F. A. Hart	96.00	Mar. 22, 1937
A-37	19,205	C. R. Wallace	105.76	Mar. 29, 1937
A-38	19,340	F. A. Hart	147.50	Apr. 3, 1937
A-39	19,590	C. B. Cates	96.00	Apr. 13, 1937
A-40	19,603	C. R. Wallace	96.00	Apr. 13, 1937
A-41	19,942	H. M. Peter	96.00	Apr. 17, 1937
A-42	20,440	F. A. Hart	96.00	Apr. 27, 1937
A-43	20,656	C. R. Wallace	147.50	May 5, 1937
A-44	20,806	E. W. Snedeker	147.50	May 6, 1937
[fol. 5]				
A-45	20,955	B. Dubel	96.00	May 17, 1937
A-46	21,024	H. M. Peter	147.50	May 17, 1937
A-47	21,145	W. W. Ashurst	96.00	May 17, 1937
A-48	21,244	C. B. Cates	96.00	June 24, 1937
A-49	21,585	H. M. Peter	131.84	June 7, 1937
A-50	21,774	B. Dubel	96.00	June 12, 1937
A-51	21,846	F. A. Hart	96.00	June 12, 1937
A-52	21,980	E. W. Snedeker	96.00	June 17, 1937
A-53	22,182	H. M. Peter	96.00	June 28, 1937
A-54	22,533	F. A. Hart	240.82	July 6, 1937
A-55	22,778	B. Dubel	172.60	July 14, 1937
A-56	23,375	R. H. Pepper	172.60	July 17, 1937
A-57	23,675	E. W. Snedeker	96.00	July 24, 1937
A-58	23,864	B. Dubel	96.00	Aug. 4, 1937
A-59	24,150	F. A. Hart	131.04	Aug. 4, 1937
A-60	25,073	H. M. Peter	125.76	Aug. 17, 1937
A-61	25,705	E. W. Snedeker	125.76	Sept. 2, 1937
A-62	25,796	E. W. Snedeker	164.64	Sept. 3, 1937
A-63	26,070	E. W. Snedeker	125.76	Sept. 15, 1937
A-64	26,078	B. Dubel	96.00	Sept. 18, 1937
A-65	26,212	H. M. Peter	147.50	Sept. 23, 1937
A-66	26,491	T. B. Jordan	164.64	Oct. 2, 1937
A-67	26,539	E. W. Snedeker	164.64	Sept. 30, 1937
A-68	26,540	H. M. Peter	131.84	Oct. 6, 1937
A-69	26,665	E. W. Snedeker	96.00	Oct. 11, 1937
A-70	26,772	H. M. Peter	105.76	Oct. 14, 1937
A-71	26,815	W. W. Ashurst	147.50	Oct. 18, 1937
A-72	26,980	B. Dubel	147.50	Oct. 18, 1937
A-73	27,350	E. W. Snedeker	164.64	Oct. 30, 1937
A-74	27,414	E. W. Snedeker	131.84	Nov. 3, 1937
A-75	27,519	E. W. Snedeker	96.00	Nov. 11, 1937
A-76	27,533	H. M. Peter	96.00	Nov. 13, 1937
A-77	27,751	E. W. Snedeker	125.76	Nov. 17, 1937
A-78	27,782	R. H. Pepper	96.00	Nov. 20, 1937

Exhibit No.	Check No.	Payee	Amount	Date of Payment
[fol. 6]				
A-79	27,935	B. Dubel	147.50	Nov. 30, 1937
A-80	28,075	H. M. Peter	164.64	Nov. 30, 1937
A-81	28,333	W. W. Ashurst	96.00	Dec. 10, 1937
A-82	28,341	E. W. Snedeker	96.00	Dec. 10, 1937
A-83	28,531	F. A. Hart	163.48	Dec. 17, 1937
A-84	28,535	B. Dubel	163.48	Dec. 17, 1937
A-85	28,650	E. W. Snedeker	125.76	Dec. 28, 1937
A-86	28,980	B. Dubel	105.76	Dec. 31, 1937
A-87	28,981	W. W. Ashurst	105.76	Dec. 31, 1937
A-88	28,982	H. M. Peter	164.64	Dec. 31, 1937
A-89	29,222	E. W. Snedeker	131.84	Jan. 14, 1938
A-90	29,390	F. A. Hart	96.00	Jan. 18, 1938
A-91	29,391	B. Dubel	105.76	Jan. 18, 1938
A-92	29,460	R. H. Pepper	96.00	Jan. 22, 1938
A-93	29,465	W. W. Ashurst	96.00	Jan. 22, 1938
A-94	30,288	H. M. Peter	164.64	Jan. 31, 1938
A-95	30,289	E. W. Snedeker	105.76	Feb. 2, 1938
A-96	30,356	R. H. Pepper	105.76	Feb. 7, 1938
A-97	30,480	E. W. Snedeker	125.76	Feb. 11, 1938
A-98	30,655	W. W. Ashurst	147.50	Feb. 15, 1938
A-99	30,792	R. H. Pepper	96.00	Feb. 24, 1938
A-100	31,024	B. Dubel	147.50	Feb. 28, 1938
A-101	31,056	E. W. Snedeker	164.64	Feb. 28, 1938
A-102	31,226	E. W. Snedeker	96.00	Mar. 12, 1938
A-103	31,230	B. Dubel	96.00	Mar. 12, 1938
A-104	31,429	H. M. Peter	147.50	Mar. 16, 1938
A-105	31,430	W. W. Ashurst	96.00	Mar. 16, 1938
A-106	31,586	E. W. Snedeker	147.50	Mar. 26, 1938
A-107	31,844	H. M. Peter	125.76	Apr. 2, 1938
A-108	31,967	B. Dubel	96.28	Apr. 6, 1938
A-109	32,110	E. W. Snedeker	96.00	Apr. 14, 1938
A-110	32,303	R. H. Pepper	96.00	Apr. 18, 1938
A-111	32,308	H. M. Peter	164.64	Apr. 18, 1938
A-112	32,311	E. W. Snedeker	164.64	Apr. 28, 1938
[fol. 7]				
A-113	32,745	F. A. Hart	163.86	Apr. 30, 1938
A-114	32,749	B. Dubel	163.86	May 3, 1938
A-115	33,112	E. W. Snedeker	96.00	May 18, 1938
A-116	33,620	B. Dubel	147.50	June 4, 1938
A-117	33,932	A. J. Cincotta	162.90	June 13, 1938
A-118	34,139	R. H. Pepper	96.00	June 23, 1938
A-119	34,314	E. W. Snedeker	96.00	June 27, 1938
A-120	34,625	E. W. Snedeker	164.64	July 5, 1938
A-121	34,847	J. H. Berry, Jr.	162.90	July 14, 1938
A-122	34,848	H. S. Wheeler	195.09	July 14, 1938
A-123	686	V. W. Worledge	182.90	Aug. 25, 1938
A-124	709	V. W. Worledge	31.68	Aug. 25, 1938
A-125	806	E. W. Snedeker	96.00	Aug. 26, 1938
A-126	859	James A. Hennessy	120.57	Aug. 31, 1938

Exhibit No.	Check No.	Payee	Amount	Date of Payment
A 127	1,114	E. W. Snedeker	164 64	Aug. 31, 1938
A 128	1,242	J. H. Berry, Jr.	162 90	Sept. 10, 1938
A 129	1,243	H. S. Wheeler	187 90	Sept. 10, 1938
A 130	1,575	E. W. Snedeker	96 00	Sept. 17, 1938
A 131	1,737	J. A. Hennessy	120 57	Sept. 26, 1938
A 132	1,754	F. C. Donald	182 90	Sept. 30, 1938
A 133	2,072	E. W. Snedeker	147 50	Oct. 5, 1938
A 134	2,176	G. A. Brace	139 57	Oct. 11, 1938
A 135	2,448	H. M. Peter	147 50	Oct. 15, 1938
A 136	2,450	R. H. Pepper	96 00	Oct. 15, 1938
A 137	2,549	E. W. Snedeker	96 00	Oct. 25, 1938
A 138	2,749	R. H. Pepper	147 50	Oct. 29, 1938
A 139	2,934	G. A. Brace	128 46	Nov. 3, 1938
A 140	2,964	E. W. Snedeker	164 64	Nov. 3, 1938
A 141	3,038	E. W. Snedeker	96 00	Nov. 8, 1938
A 142	3,118	V. W. Worledge	182 90	Nov. 10, 1938
A 143	3,119	James A. Hennessy	120 57	Nov. 16, 1938
A 144	3,333	E. W. Snedeker	147 50	Nov. 16, 1938

[fol. 8] IN UNITED STATES DISTRICT COURT

STIPULATION—Filed June 7, 1943

It is stipulated by and between the respective parties hereto that the defendant received notice of demand for the amount claimed by the plaintiff as set forth in the complaint on December 8, 1938.

Bernard J. Long, Assistant United States Attorney, Attorney for Plaintiff. George C. Gertman, Attorney for Defendant.

IN UNITED STATES DISTRICT COURT

AMENDED ANSWER—Filed March 5, 1943

By permission of the Court, the defendant substitutes this amended answer for the answer it heretofore filed.

1. Defendant admits that the plaintiff is a sovereign corporation but denies that in this type of case it enjoys any rights superior to those of any other suitor. Defendant denies that it owes the United States $18,060.83 and denies that the United States is equitably entitled to recover that

amount, with interest. Defendant says that the plaintiff redeemed the 144 checks over the period from July 14, 1936 to November 16, 1938, and in doing so it paid to defendant the aggregate amount of $18,060.83 under the circumstances hereinafter related, and not under the circumstances stated in the complaint.

2. Between July 14, 1936 and November 16, 1938 the plaintiff issued, at Marine Headquarters, Washington, [fol. 9] D. C., 144 checks for various amounts (photostatic copies of the checks are marked Exhibits A-1 to A-144) aggregating $18,060.83, payable to the order of the marine officers named therein, most of whom were stationed, and whose signatures were known at said Marine Headquarters. These checks, however, were not delivered to the payees themselves but were delivered to James H. Foley, a civilian employee, for delivery to them.

There was nothing about the checks to indicate that they were bogus as they were normal in form, each bore the stamp or seal of the United States, each was signed and validated by an officer of the United States vested with authority to sign checks in its behalf in payment of legitimate obligations. Under Section 31, Title 22, 1929 District of Columbia Code, each check carried the United States warranty that it was issued *bona fide* to each payee for value and had the object typed thereon. And in dealing with and handling these checks, defendant relied upon said warranty.

3. On or about November 21, 1938, the General Accounting Office at Washington, D. C., discovered that Captain James H. Berry, Junior, as payee, was not entitled to the check listed in Schedule B as A-121, No. 34847, of $162.90, which had been paid to defendant by the plaintiff on July 13, 1938. This discovery led to the further discovery by the plaintiff that all the 144 checks were bogus and that they had been surreptitiously issued and that all bore forged endorsements of the payees' signatures. Thereupon a letter dated November 21, 1938, signed by R. J. Moffett, Acting Comptroller General, calling attention to the discovery was sent to the Major-General Commandant, Marine Corps Headquarters, Washington, D. C., which, in due course, reached the hands of Brigadier-General Russell Putnam, the Paymaster of the United States Marine Corps, Washington, D. C., who, on November 22, 1938, officially ordered the Administrative Section of the Paymaster's Department

of the Marine Corps to make a thorough investigation of the activities in the Marine Corps Department of said James [fol. 10] H. Foley who was a civil service clerk C. A. F.—4. Upon learning of this ordered investigation Foley went to New York where he killed himself on November 22, 1938.

Upon completing its investigation about December 5, 1938, the Administrative Section aforesaid reported to Paymaster Putnam, *inter alia*, substantially as follows:

(a) The 144 checks were prepared by James H. Foley.

(b) The 144 checks were supported by travel or mileage orders and vouchers which Foley forged.

(c) No money was owing the payees of the checks for the object indicated on them.

(d) The 144 checks were presented by Foley to the disbursing officers who signed them without verifying the vouchers and documents which supported them.

(e) No payee of any check ever saw it or received the proceeds.

(f) No payee of any of the checks contributed to the fraud.

(g) The 144 checks were delivered by the plaintiff through its disbursing officers or paymaster to James H. Foley for delivery to the payees in the belief that they were lawfully entitled to receive them.

(h) Foley forged the signatures of the payees upon each check and either cashed or deposited it at The Anacostia Bank, Anacostia, D. C., where Foley maintained a checking account, and received the proceeds which he converted to his own use.

Thereupon, on February 6, 1939, the Acting Comptroller of the United States, I. N. Eliot, wrote the Secretary of the Navy and officially called his attention to the government's loss of $18,060.83 and the government's neglect which brought it about.

Thereafter, on or about May 1, 1939, pursuant to its appointment by the Secretary of the Navy, a Board of Inquiry was convened at Marine Corps Headquarters, Washington, D. C., for the purpose of "inquiring into the cir- [fol. 11] cumstances and the general activities of James H. Foley who defrauded the United States of $18,060.83 and the circumstances which made the execution of such fraud possible." The findings of the Board of Inquiry have not been made public.

4. Foley was well known to the paymaster and disbursing officers of the United States Marine Corps at its Headquarters, Washington, D. C., and until November 21, 1938 he enjoyed the highest reputation for honesty and integrity. Owing to this Foley was allowed free access to all blank forms of the Marine Corps, including blank checks of the United States.

5. As the 144 checks were issued and turned over to Foley for delivery, Foley, after first forging the payees' signatures upon them, either cashed or deposited them to his credit at The Anacostia Bank, Anacostia, D. C., where he was favorably known and had carried a checking account for about twelve years.

The Anacostia Bank, having the same faith and confidence in Foley as his superior officers in the Marine Corps, did not question Foley regarding the genuineness of the payees' endorsements but accepted the checks upon the plaintiff's warranty of their genuineness and in the belief that they bore the genuine signatures of the payees. Foley withdrew the proceeds of all the checks deposited to his credit before his forgeries were discovered.

Thereupon, as the checks were cashed or deposited by Foley during the twenty-eight months, The Anacostia Bank endorsed each check and transmitted it to the defendant for collection to its account. Relying upon the plaintiff's aforesaid warranty of their genuineness and believing that they bore the genuine signatures of the payees, defendant, as the checks were received by it from The Anacostia Bank, placed the following printed endorsement on the back of each check:

> [fol. 12] "Pay to the order of any Bank, Banker or Trust Co. Prior endorsements guaranteed. National Metropolitan Bank, Washington, D. C."

This endorsement was made through the means of a rubber stamp and it is the same endorsement which defendant uniformly used on all legitimate government checks when presented at the Treasury for payment and redemption. Defendant denies that it used the endorsement "prior endorsements guaranteed" for the purpose or with the object of inducing the United States to pay to it the amounts of the checks. A similar endorsement was first placed upon each check by The Anacostia Bank and, in so doing,

that Bank acted in good faith, in ignorance of the forgeries and in the belief that the payees' signatures upon each of the checks was genuine and true. Defendant says that it did not negotiate the checks to the plaintiff when it so endorsed them and that its endorsement amounted to nothing more than a receipt for the proceeds. In any event the endorsement added nothing extra to the normal liability of an endorser of valid negotiable paper. It is denied that the endorsement amounted to a guaranty of the payee's signature. See United States v. Guaranty Trust Co. of New York, 293 U. S. 340.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment applied by the plaintiff to each of the checks that "* * * said Treasurer, believing said false, forged and counterfeit endorsement to be the true and genuine signature of the payee named on the face of the check, paid to the defendant the amount thereof." But defendant says that it is its belief that the Treasurer, in redeeming said checks, paid the money upon each check in the belief that it was issued *bona fide*, was payable to the order of a *bona fide* payee, was given in payment of a lawful obligation and that each bore the genuine endorsement of the payee.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment applied by [fol. 13] the plaintiff to each check that "* * * said Treasurer, relying upon the guaranty of the defendant as to the validity of the endorsements upon the said checks, and solely because thereof, paid to the defendant the amounts of the said checks on the dates set out in Exhibit B annexed hereto." Defendant says, as aforesaid, that it is its belief that the Treasurer, in redeeming the said checks, paid the money called for by them in the belief that they were issued *bona fide*, to a *bona fide* payee, in payment of a lawful obligation and that each check bore the genuine endorsement of the payee.

Relying upon the plaintiff's warranty of the genuineness of the checks and believing them to bear the genuine signatures of the endorsers, and in ignorance of their forgery and of their being bogus in their inception, defendant, as each check was received by it for collection, as aforesaid, presented it to the Treasurer of the United States for payment and redemption and upon collecting the proceeds

placed the same upon its books to the credit of The Anacostia Bank, Anacostia, D. C.—the cashing Bank—and thereafter, in the regular course of business, and before the discovery of the forgeries, defendant paid over the proceeds of said checks to said Anacostia Bank. Defendant never received nor did it exact any compensation or profit for its services in that behalf and throughout its dealings with the plaintiff in connection with said checks it acted with the utmost good faith.

Defendant was not informed of the forgeries until some time during the months of November and December, 1938, and until that time defendant was ignorant thereof, as was also The Anacostia Bank. Defendant further says that neither it nor The Anacostia Bank learned that the checks were bogus in their inception and that the government's warranty of their genuineness was untrue until the hearing took place before the Board of Inquiry at Marine Corps Headquarters.

[fol. 14] Defendant admits that the plaintiff, upon discovering that it had unwittingly issued the bogus checks which it had warranted as genuine ones and that its employees had forged them, attempted to escape the obligation of its warranty and the result of its neglect in issuing and delivering the checks by shifting from itself to the defendant the responsibility for the loss. In making its demand for restitution upon the defendant, the plaintiff ignored its own unintentional culpability in the creation and negotiation of the checks and the vital fact that it, itself, was the first who dealt with the forger and that it, itself, placed in his hands the means which he used to delude the public and obtain money unlawfully.

6. Defendant says that the plaintiff owes to the public the duty to issue only legitimate checks to legitimate creditors of the government and that if it issues fictitious checks, warranting them to be genuine, equity and fair play require that it should bear the loss.

7. Owing to the confidence reposed in Foley by the officers of the Administrative Section or Division and by the disbursing officers of the Marine Corps Headquarters, and owing to their neglect of duty in failing to check or supervise his work, Foley, on 144 occasions between July 1936 and November 1938, successfully defrauded the United

States by obtaining money unlawfully, by the means herein stated, in the aggregate amount of $18,060.83. In each instance, and in the presence of his superior officers, Foley took four successive steps in natural sequence to accomplish his felonious purpose. In each instance his first step was to fill in available blank travel orders. This involved the forging of not less than four marine officers' names. Using this fictitious and forged document to support the voucher, Foley's next step was to fabricate a fictitious travel or mileage voucher. This also involved the forging of the signature of the ostensible marine officer claimant. Foley's next step, which followed in natural sequence, was to write the check and make it payable to the order of the ostensible [fol. 15] payee for the amount of the spurious voucher and present it to the disbursing officer or paymaster for signature and validation. Sometimes, either before or after the check was validated, Foley would write "pay" in the place of "mileage" upon the check. Without verifying the documents and without making any examination to determine whether the United States owed money to the payees of the checks for the object typed thereon, or otherwise, the disbursing officers or paymaster signed and validated the checks in reliance upon their faith in Foley and delivered them to him for delivery to the ostensible payees. Having thus obtained possession of the means by which to delude the public, Foley's final step was to forge the ostensible payee's signature and after endorsing the check himself, he either cashed or deposited it at The Anacostia Bank.

8. Many years ago the United States Marine Corps, in obedience to the Act of Congress of August 23, 1912, 37 Stat. 375, set up a section or division in the United States Marine Corps Headquarters, Washington, D. C., known as the Administrative Section or Division of the United States Marine Corps, which was specifically charged with the duty of preauditing, examining and checking all accounts and claims against the United States arising in the Marine Corps. Its duties also included the examination and preaudit of all documents such as payrolls, mileage or travel orders, to determine their legitimacy and if they were found genuine and correct it was the duty of this Division to prepare checks for presentation to the disbursing officers or paymaster for their signatures and validation. And being so created to represent and protect the United

States and the public from fraud, imposition and loss, the Administrative Section neglected its duty and obligation by allowing and permitting Foley to (1) prepare payroll vouchers and travel and mileage vouchers for marine officers without its supervising, examining, preauditing or checking his work, and (2) write and prepare checks in [fol. 16] payment of officers' pay and officers' mileage and travel expenses without its supervising the same and in violation of its duty.

The said Administrative Section was also specifically charged by law with the duty of post-auditing the accounts of all paymasters and disbursing officers of the Marine Corps before certifying them to the General Accounting Office of the United States for supplemental audit and check; such post-audit involved the inspection, examination and verification of all orders, documents and vouchers which supported the issued checks. Being so charged to represent and protect the United States and the public from fraud, the Administrative Section neglected its duties to the United States and to the public by failing in its original post-audit to make such examination and inspection as would timely unearth Foley's fraud as it was being committed by him. It is a fact, however, that this Administrative Division or Section, using the files available in the office of the Marine Corps Headquarters, did unearth Foley's fraud and turpitude within fifteen days after it was called to its attention by the General Accounting Office.

9. The disbursing officers and paymaster who signed and validated the checks were specifically charged by law with the duty, before disbursing public funds, of ascertaining whether the United States actually was indebted to the payees of the checks in the amount called for and the object typed thereon. But the disbursing officers and paymaster neglected their duty in this regard. Furthermore, defendant says that plaintiff knew from its records and accounts, if they had been examined beforehand, that it was not indebted to the payees of the checks in the amount or for the object typed thereon or for any other object.

10. In its dealing with these checks defendant believed that they were issued by the government in the regular course of its business; defendant supposed that they were being issued direct to the payees for legitimate purposes [fol. 17] and not to the forger for illegitimate purposes;

defendant supposed that each rightful payee obtained possession of the check and rightfully endorsed it. And when the government unintentionally issued these checks and put them in the forger's hands, it deprived the public of the protection which normal legitimate checks carry as a legitimate check must be lost or stolen to suffer a forgery, whereas these checks, being the product of an "inside job," were predestined to be forged.

This is not the case of a suit against a cashing bank whose negligence in cashing the checks would offset the government's neglect in issuing them, but it is a suit against a collecting bank which is not guilty of any negligence contributing to the success of the forgery. The law of the case is ruled in part by Holley v. Missionary Society, 180 U. S. 284, and United States v. Chase National Bank, 252 U. S. 485.

The case of United States v. National Exchange Bank of Providence, 214 U. S. 302, was a suit against the negligent cashing bank.

11. Section 24, Title 22, 1929 District of Columbia Code being a part of the Negotiable Instrument Statute, provides—

> "Where a signature is forged or made without the authority of the person whose signature it purports to be it is wholly inoperative, and no right to redeem the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority."

This Statute states the general rule as contended for in this case by the plaintiff. But this Statute also contains an exception to the general rule, which exception the United States disregards but upon which defendant relies. The [fol. 18] exception, as stated in the Statute, is that the general rule applies—

> "unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority."

This exception to the general rule springs from the just and equitable principle recognized in all jurisdictions that where one of two innocent persons must bear a loss, it must be borne by the one whose conduct made it possible.

The loss which the plaintiff sustained is traceable direct to the issuance of the checks and placing them in the forger's hands. No bad faith or negligence, traceable to defendant—the collecting Bank—contributed to the payment of the checks or their forgery. The forgery of the checks deprived nobody of title, as would be the case if the checks had been genuine and normal. In paying over the money to the defendant, as the possessor of the checks, the United States redeemed its own spurious paper which it had unwittingly issued and which had entrapped an innocent bank. On the other hand, the United States put the bogus checks into circulation and warranted them as genuine. The United States was the first to contact and deal with the forger, whereas defendant never dealt with him. The checks were not owned by anybody, *i. e.*, nobody had title to them. The United States was the first to repose confidence in Foley and it, itself, put in Foley's hands the instruments which he used to rob the cashing bank. Thereby the United States invited and facilitated the forgeries.

The warranty of the government under Section 31, Title 22 of the 1929 District of Columbia Code, that the checks were issued for a valuable consideration, and its warranty under Section 91 of said Title and Code that the payees of the checks were *bona fide* entitled to them and that they could rightfully endorse the same misled defendant into endorsing and cashing them because it says that if it had known the facts as set up in this answer, it would not have [fol. 19] endorsed nor collected the checks. In representing and warranting to the defendant that these checks were *bona fide* in all respects, and the defendant having acted upon the belief that said warranties were true, plaintiff disarmed it of the protection which the warranties would have carried if true. Defendant says that the initial misrepresentation of the government that these checks were genuine in all respects lulled it into a sense of false security; that if the representations of the government to the public that the checks were genuine in all respects had been true, the checks would have reached the payees' hands in the regular course of business and there would have been no forgeries and no loss.

12. Defendant further says that owing to its confidence reposed in Foley, the United States intrusted and delegated to him power and duty, without his work being checked or supervised by any officials of the Marine Corps Headquarters, to prepare payrolls and mileage or travel vouchers for marine officers and to certify them to the disbursing officers or paymaster for their signatures upon the checks. And to perform this delegated duty the United States made available to Foley the necessary blanks and blank checks. Under this duty it was also Foley's duty, before drawing the checks, to verify all documents supporting the vouchers to determine their authenticity and legitimacy. Under the delegated power and authority it was also Foley's duty to certify the checks, with accompanying vouchers and supporting documents, to the disbursing officers for signature, which he did in these 144 instances. Foley performed this duty faithfully and honestly for many years. While it was the duty of the disbursing officers, before signing the checks, to make an independent examination to determine the legitimacy of the checks, they, owing to the power and duty thus conferred upon Foley, perfunctorily signed the checks in question. The signatures of the disbursing officers upon the checks being routine only, the [fol. 20] checks in question were bearer paper negotiable by delivery. Paragraph Third of Section 10, Title 22, 1929 District of Columbia Code—being part of the Negotiable Instruments Law.

For the reasons and upon the grounds stated in this answer, defendant says that the aforesaid statutory exception to the general rule applies and that under the facts and circumstances the government is estopped from questioning the genuineness of the employee-forger's endorsement of the ostensible payees' signatures.

Finally, defendant invokes the equitable principle, always applicable as a defense in bar to a suit of this type—money had and received—that—

> "Where one or the other of two innocent persons must suffer loss from the fraud or misconduct of a third person, in whose honesty both have reposed confidence, he who first reposes confidence and intrusts him, the third person, with the means by which he may perpetrate the fraud, must bear the loss."

And having fully answered the complaint, defendant prays that it be dismissed.

George C. Gertman, Attorney for Defendant, American Security Building, 730 15th Street, Washington, D. C.

The defendant demands a trial by jury.

George C. Gertman, Attorney for Defendant.

Service of copy of the foregoing Amended Answer acknowledged this 3rd day of March, 1943.

Grace B. Stiles, Asst. U. S. Atty., of Counsel for Plaintiff.

[fol. 21] IN UNITED STATES DISTRICT COURT

AMENDMENT TO AMENDED ANSWER—Filed March 5, 1943

By permission of the Court the defendant amends its amended answer as of the date of the filing thereof, by adding thereto the following:

The first check issued, the one for $172.60 to Lieut. Colonel C. B. Cates, was redeemed by the plaintiff July 14, 1936, but Foley's fraud upon the Government preceded its issuance, documentary evidence of which was of record in the Office of the Marine Corps Headquarters. Foley's fraud, however, was not detected earlier because no supervision was exercised over his work and no preaudit or postaudit of the documents and vouchers supporting the checks was made, though if made the fraud and deceit would have been instantly exposed, as it was two years afterwards when the records and accounts were examined and audited. It was the fraud practiced upon the Government that exposed Foley's rascality; not the fraud and deceit which he practiced upon the cashing bank. The plaintiff, at this late date, wants the defendant to correct its mistake in accrediting the Cates and other checks as genuine, but it suggests no reparation for its own culpable negligence, but for which there would have been no forged checks.

After the redemption of the Cates' check the plaintiff was put upon inquiry to ascertain whether the check was genuine and legitimate and to promptly communicate with defendant the result of the inquiry if the check were found to

be bogus and the endorsement forged in order that, in subsequent cases, the defendant might not be prejudiced by handling checks bearing Foley's signature. Defendant was justified in assuming that this duty was being performed promptly as the means of knowledge were within the plaintiff's reach. Besides, most if not all of the payees of the checks were detailed at Marine Headquarters and their signatures were well known there. It is true that verification [fol. 22] of the Cates' check and examination of the accounts, after the check had been redeemed, would not have prevented a legal loss by the plaintiff in that instance; it would, however, have prevented the successful repetition of continuous frauds. Therefore, when the Government continued, as it did, on 143 other occasions to issue spurious checks as genuine ones, it reaffirmed the authenticity of each check. But instead of the Government ascertaining the truth, as these checks were being successively issued and redeemed, it waited until Foley was dead. The loss which the plaintiff has sustained was not the consequence of the forgeries of the payees' names but the consequence of the unlawful issuance of spurious checks as genuine ones. Upon this defense, regardless of other defenses, defendant is entitled to a trial by jury. Leather Mfg. Bank v. Morgan, 117 U. S. 96.

George C. Gertman, Attorney for Defendant.

Service of copy of foregoing accepted. No objection to its filing.

Bernard J. Long, Assistant U. S. Attorney, of Counsel for Plaintiff.

Permission given to file the foregoing amended answer as of March 5, 1943. This amendment was considered by the Court in conjunction with the original amended answer before the entry of judgment in this case upon the plaintiff's motion.

F. Dickenson Letts, Justice.

In United States District Court

Motion for Judgment on the Pleadings—Filed March 22, 1943

The plaintiff moves the Court as follows:

1. To enter judgment for the plaintiff as prayed for in the compliant upon the pleadings, because from the complaint [fol. 23] filed on behalf of the plaintiff, together with the amended answer filed on behalf of the defendant, there is no genuine issue as to any material fact and the plaintiff is entitled to judgment as a matter of law.

Edward M. Curran, United States Attorney; Bernard J. Long, Assistant United States Attorney, Attorneys for Plaintiff.

In United States District Court

Order Directing Clerk to Transmit Original Photostatic Copies of Checks, Being Exhibits A-1 to A-144—Filed June 15, 1943

Upon oral motion of the defendant, it is by the Court this 15th day of June, 1943, Ordered that in the preparation of the record on the defendant's appeal from the judgment entered in this action on June 9, 1943, the Clerk of the Court shall transmit to the United States Court of Appeals for the District of Columbia, with the record, the original photostatic copies of checks filed with the complaint and marked Exhibits A-1 to A-144.

F. Dickenson Letts, Justice.

Consent given:
Bernard J. Long,
Asst. United States Attorney.

In United States District Court

Judgment—Filed June 9, 1943

Upon consideration of the motion for judgment on the pleadings filed on behalf of the plaintiff, United States of America, it is by the Court this 9th day of June, 1943, [fol. 24] Ordered, Adjudged and Decreed, That judgment be and the same hereby is entered for the plaintiff in the

total sum of $18,060.83, together with interest at 6% from August 11, 1942 and costs.

F. Dickenson Letts, Justice.

No objection to form:
George C. Gertman,
Attorney for Defendant.

Defendant notes an exception to the above order.

IN UNITED STATES DISTRICT COURT

ORDER AUTHORIZING DEFENDANT TO DEPOSIT IN THE REGISTRY OF THE COURT $22,000.00 IN CASH IN LIEU OF A SUPERSEDEAS BOND—Filed June 15, 1943

Pursuant to Rule 73 (d) of the Rule of Civil Procedure for the District Courts of the United States, it is by the Court this 15 day of June, 1943, Ordered that in lieu of the filing of a supersedeas bond in the penalty of $22,000.00, with sureties to be approved by the Court, the defendant is hereby authorized and allowed to deposit in the Registry of the Court the sum of $22,000.00, and when so deposited the same shall stand accepted in the place of a supersedeas bond in that amount and operate to supersede the execution of the judgment entered in this action pending the final disposition of the defendant's appeal to the United States Court of Appeals for the District of Columbia.

F. Dickenson Letts, Justice.

Consent is hereby given to the above order:
United States of America,
By Bernard J. Long,
Asst. United States Attorney.

[fol. 25] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed June 15, 1943

Notice is hereby given this 15th day of June, 1943, that the defendant, The National Metropolitan Bank, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 9th day of June, 1943, in favor of the plaintiff against said

defendant for $18,060.83, with interest at 6% from August 11, 1942, and costs.

George C. Gertman, Attorney for Defendant, The National Metropolitan Bank.

Acknowledgment is hereby made of service of copy of the foregoing notice of appeal.

United States of America,
By Bernard J. Long,
Asst. United States Attorney.

MEMORANDUM

June 15, 1943.

Copy of Notice of Appeal mailed by Clerk to U. S. Attorney.

Deposit by Gertman into Registry of the Court of $22,000.00 in cash in lieu of Supersedeas Bond.

IN UNITED STATES DISTRICT COURT

STATEMENT OF POINTS ON WHICH THE DEFENDANT (APPELLANT) INTENDS TO RELY ON ITS APPEAL—Filed June 15, 1943.

The District Court, upon the pleadings and the law applicable thereto, erred as follows:

[fol. 26] 1. In granting the plaintiff's motion for summary judgment on the pleadings.

2. In entering the appealed judgment.

3. In adjudging that under no aspect of the defense is defendant equitably entitled to trial by jury.

4. In adjudging that in equity and justice there is no difference, from the Government's standpoint, between a check issued lawfully for a legitimate purpose to a bona fide payee for value which is lost and forged and a check issued unlawfully for an illegitimate purpose to a fictitious payee and delivered by it into the hands of the forger who forges it.

5. In adjudging that though the plaintiff dealt direct with the forger in 144 separate transactions, and it, itself, placed in his hands worthless checks totalling $18,060.83 as the means with which to successfully carry out his forgeries to fruition, the good faith and innocence of the defendant which never dealt with nor contacted the forger may be disregarded as immaterial.

6. In adjudging that defendant must pay the Government $18,060.83 and about $1,000.00 interest, besides costs, because it innocently turned in, bearing forged payees' endorsements, the 144 checks which the Government years ago issued contrary to prohibition of statutory law in payment of nonexistent obligations, and which it actually placed in the hands of the forger who forged the endorsements.

7. In adjudging that the Government may issue 144 checks contrary to prohibition of statutory law, make them payable to fictitious payees presumably in payment of existing obligations, put them in circulation by placing them in the forger's hands, and be wholly immune from the consequences when they turned up in innocent hands bearing forged endorsements of the payees' names.

8. In adjudging that through its dealings with the 144 checks during the 2¼ years, defendant became an indemnitor of the Government against loss through the issuance of the checks which were not susceptible of genuine endorsements.

[fol. 27] 9. In adjudging, as inapplicable, the equitable principle that where one of two innocent persons must suffer loss by the wrongdoing of a third person, the one whose fault made the loss possible and facilitated it should bear the loss.

10. In adjudging that the plaintiff, as a matter of equity, is entitled to judgment on the pleadings for the money sued for, with interest and costs.

11. In adjudging that there was no duty devolved upon the Government at any time, and especially either before the issuance or after the redemption of the first check, to promptly uncover Foley's initial fraud so as to prevent its recurrence and repetition 143 times, and in adjudging that the question of the Government's reasonable diligence in this regard is immaterial.

12. In adjudging that defendant was not justified in believing that since no notice had come from the Government regarding the invalidity or forgery of any check, defendant could continue to receive and accredit the checks as genuine ones.

13. In adjudging that the plaintiff is not the author of its own loss.

14. In adjudging that the equities of the plaintiff are superior to the defendant's.

15. In adjudging that the money sued for *ex acquo et bona* belongs to the plaintiff.

16. In adjudging that it would be unconscientious not to require the defendant to return the money even though it paid it over to the forwarding bank years ago and long before the discovery that the checks were bogus.

17. In adjudging that the efficient cause of the loss was not the Government's negligence and carelessness in issuing the checks.

18. In attributing negligence to the defendant and in ignoring plaintiff's negligence.

Dated, June 15, 1943.

George C. Gertman, Attorney for Defendant

[fol. 28] Service of copy of the foregoing points and authorities acknowledged this 15 day of June, 1943.

Bernard J. Long,
Asst. United States Attorney.

IN UNITED STATES DISTRICT COURT

DESIGNATION OF RECORD—Filed June 15, 1943

Pursuant to Rule 75 (f) of the Rules of Civil Procedure for the District Courts of the United States, it is hereby stipulated and agreed between the parties that the following shall constitute the record on appeal from the judgment entered in this action against the defendant on June 9, 1943:

1. The complaint with Exhibit B, and the date of the filing thereof. Also stipulation as to amendment of the

complaint filed June 7, 1943. Also the original photostatic copies of Exhibits A-1 to A-144 filed with the complaint. Counsel will obtain an order of the Court directing that the original photostatic copies of Exhibits A-1 to A-144 now on file be transmitted with the record but counsel agree that Exhibits A-1 to A-144 are not to be included in the appendix to appellant's brief or printed in the Court of Appeals.

2. Defendant's amended answer and the date of filing. Also, with it and as a part thereof, the amendment to the defendant's answer filed June 9, 1943, with copy of the District Court's order written thereon.

3. Plaintiff's motion for judgment on the pleadings and the date of filing.

4. Defendant's reply and points and authorities, and the date of the filing thereof, in opposition to the plaintiff's motion for judgment on the pleadings. It is agreed that owing to its length this need not be printed in the appellant's appendix to its brief.

[fol. 29] 5. Order of the Court on June 15, 1943, directing the Clerk of the Court to transmit with the record on appeal the original photostatic copies of the checks involved, being Exhibits A-1 to A-144, both inclusive.

6. Copy of the minute entry, and date thereof, of the judgment entered by the Court against the defendant on June 9, 1943, on the plaintiff's motion. Let this entry also show that the defendant noted an exception to the entry of the judgment.

7. Copy of the order of the Court of June 15, 1943 authorizing the defendant to deposit in the Registry of the Court $22,000.00 cash in lieu of the filing of a supersedeas bond.

8. Memorandum of the Clerk of the District Court showing the deposit of $22,000.00 in the Registry of the Court, and the date of the deposit thereof.

9. Defendant's notice of appeal from the judgment entered against it on June 9, 1943, and date of filing thereof.

10. Copy of appeal and memorandum or certificate of the Clerk of the District Court showing date of his mail-

ing or serving upon plaintiff's counsel of copy of notice of defendant's appeal.

11. Copy of defendant's points relied on on appeal and date of its filing, and acknowledgment by plaintiff of service of copy thereof.

12. Copy of this agreed designation of record.

This stipulation entered into this 15 day of June, 1943.

United States of America, *Plaintiff*, By Bernard J. Long, Asst. United States Attorney. The National Metropolitan Bank, *Defendant*, By George C. Gertman, *Its Attorney*.

[fol. 30] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA

No. 8562

NATIONAL METROPOLITAN BANK, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the District of Columbia

Argued March 16, 1944. Decided May 1, 1944

Mr. George C. Gertman for appellant.

Mr. Robert Kaplan, member of the Bar of the Supreme Court of Massachusetts, *pro hac vice*, by special leave of court, with whom *Messrs. Francis M. Shea*, Assistant Attorney General, *Edward M. Curran*, United States Attorney, *Charles B. Murray*, Assistant United States Attorney, and *Leavenworth Colby*, Attorney, Department of Justice, were on the brief, for appellee. *Mr. Daniel B. Maher*, Assistant United States Attorney, also entered an appearance for appellee.

Before Groner, C. J., and Edgerton and Arnold, JJ.

OPINION—Filed May 1, 1944

GRONER, C. J.:

National Metropolitan Bank appeals from a judgment of the District Court in favor of the United States in the sum of $18,060.83. Judgment was entered summarily by the District Court on the authority of *Washington Loan & Trust Co.* v. *U. S.*, 77 U. S. App. D. C. 284, 134 F. (2d) 59. The facts here are these:

James H. Foley was a civilian clerk in the Headquarters office of the Paymaster of the United States Marine Corps in Washington City. He was assigned to prepare officers' pay and mileage vouchers, to prepare checks in payment thereof, to present the checks for signature by the Paymaster or other disbursing officers duly authorized to draw checks on the Treasury, and to deliver the signed checks to the named payees. From time to time during a period of twenty-eight months, beginning shortly before July 13, 1936, and ending November 14, 1938, Foley forged pay and travel mileage vouchers, together with the necessary supporting travel orders, and prepared one hundred and forty-four Treasury checks for payment of the amounts of the forged vouchers and orders. In the ordinary course he presented the checks to the Paymaster, who signed them. All were payable to one or another of sixteen actually existing Marine officers stationed in Washington. None of the [fol. 31] payees was entitled to the proceeds of the checks or had any knowledge of the fraud. The signed checks were returned to Foley for distribution to the several officers, but Foley, instead of delivering the checks, forged the signatures of the payees, added his own name as second endorser, and cashed or deposited them with the Anacostia Bank of Anacostia, District of Columbia. That bank made no investigation of the genuineness of the payees' signatures, but took the checks in reliance on Foley, stamped them with the endorsement—"Pay to the order of any Bank, Banker or Trust Company. Prior endorsements guaranteed," and transmitted them to the National Metropolitan Bank (appellant) for collection. The latter bank likewise so endorsed the checks, presented them to the Treasury and received payment. It credited the collections to the Anacostia Bank in the regular course of business and paid over the proceeds prior to the discovery of the for-

geries in November, 1938, and the Government's demand on appellant of repayment in December, 1938.

The Paymaster who signed the checks was unaware of the fraud, having relied upon Foley's reputation for honesty.

In the *Washington Loan & Trust Co.* case, relied upon by the lower court, the facts were these:

In 1933 Civilian Conservation Camps were, by order of the President, established throughout the United States. The Chief of Finance of the United States Army was made disbursing officer of the funds allocated to the camps. Stitely, the person responsible for the forgeries, was chief of the voucher unit of the accounts section of the Park Service, whose duty it was to prepare bi-monthly payroll vouchers in the names of employees of the Service, present them to the disbursing officers and receive and distribute the checks payable to such employees. For four years Stitely made up fraudulent payroll vouchers for fictitious and non-existent employees of an imaginary camp. These he took to the office of the Chief of Finance each pay day and received checks payable to the persons on the legitimate and also on the fraudulent payrolls. The checks on the fraudulent payrolls he retained, forged the signatures of the payees and cashed or deposited them to his account in one of the banks, defendants in the suit. After four years his frauds were discovered and suit was brought by the United States to recover the amounts paid to the banks on account of the forged checks.

From these statements of facts it will be seen that in both cases the checks were drawn by one agency of Government on another, were issued on fraudulent vouchers to payees to whom the United States owed nothing; in each the names of the payees were forged by a dishonest employee of the United States; in each the United States was negligent in not sooner discovering the frauds; and in each the checks were cashed or deposited in banks and the sum of the checks thereafter paid on demand by the United States on the faith of the banks' guarantee of all endorsements. This we said in the *Washington Loan & Trust Co.* case was enough to entitle the United States to recover, notwithstanding the negligence in the issuance of the checks or the unreasonable length of time before discovery of the forgeries, since the Government as drawer and drawee

owed no duty to the banks with reference to the endorsements, whereas it was the obligation of the banks, at their peril, to be sure the endorsements which they guaranteed were genuine.

> [fol. 32] "In other words, the failure of the Government to detect the fraud, though due to negligence, was not the cause of the loss, since in the whole transaction, the Government and the bank dealt at arm's length, and the primary obligation of the bank to see, to the genuineness of the endorsements continued throughout." (134 F. (2d) p. 62.)

And though we noticed and referred to a number of exceptions to the rule which in particular circumstances would bar the drawer or drawee from recovery, we found in that case no facts to bring it within any of the exceptions. We think this is also true of the instant case, but counsel for appellant very earnestly urges that there *are* material differences. One, he insists, is that here the defendant bank was only a collecting agent of the bank in which the checks were first deposited and hence is liable only if it is shown it was itself at fault. Another, that being only a collecting bank and having paid over the proceeds to its principal before notice of the forgery, it is thereby relieved of liability. The first of these points was considered by us in the former case and rejected on the ground, as we have seen, that appellant (bank), as holder, was under a statutory [1] duty to determine the genuineness of the endorsements, and when it presented the checks for payment with a warranty, express or implied, that the endorsements were in all respects regular, it thereby made itself liable to the drawer or drawee if it afterwards was shown that they were forged. *Clearfield Trust Co.* v. *U. S.*, 318 U. S. 363-8. The second, we think, is equally without merit, for it wholly overlooks the fact that nothing appears in the circumstances accompanying the collection to put the Treasury on notice that appellant was acting, as is now claimed, only as collecting agent for the Anacostia Bank. In presenting the checks appellant did not, as it might have done, designate or identify itself as agent or trustee for collection, nor did it represent itself as acting only "for the account" of the Anacostia Bank. Cf. Sec. 36, *N. I. L.*, D. C. Code 1940, Sec. 28-307, and

[1] D. C. Code 1940, Sec. 28-124.

see *Interstate Tr. Co.* v. *U. S. Nat. Bk.*, 67 Colo. 6, 185 Pac. 260. Instead, it endorsed the checks so as to imply to the drawee that prior payment had been made to and acknowledged by the identical persons named as payees. This warranty the United States was entitled to rely on and did rely on, and since it was false, it is now too late to claim that as presenting bank appellant acted only as agent for another. The unconditional demand for payment was, as we held in the *Washington Loan & Trust Company* case, a representation of valid title in the demanding bank and a certification that all prior endorsements were regular and valid and entitled the holder to receive the proceeds, *Clearfield Trust Co.* v. *U. S.*, *supra*. In such circumstances the universal rule is that a general endorsement by the demanding bank is the equivalent that it has valid title to the check and to the proceeds in its own right. If we are correct in thinking this is the rule, then obviously it must make restitution when its warranty is shown to be untrue. See *U. S.* v. *Nat. Exch. Bank of Providence*, 214 U. S. 302; *Insurance Co.* v. *Fourth Nat. Bk.*, 12 F. (2d) 100; *Fulton Nat. Bk.* v. *U. S.*, 107 F. (2d) 86; *Farmers State Bk.* v. *U. S.*, 62 F. (2d) 178; *District Nat. Bk.* v. *Washington Loan & Trust Co.*, 62 App. [fol. 33] D. C. 198, 65 F. (2) 831; *Clearfield Trust Co.* v. *U. S. supra*; *Hartford-Conn. Trust Co.* v. *Riverside Trust Co.*, 123 Conn. 616, 197 Atl. 766, and cases cited in *Washington Loan & Trust Co.* v. *U. S.*, *supra*. Appellant's cases have all been carefully reviewed and considered and we think do not change the result.

Affirmed.

[fol. 34] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, APRIL TERM, 1944

No. 8562

THE NATIONAL METROPOLITAN BANK, a Corporation, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the District of Columbia.

JUDGMENT—Filed May 1, 1944

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Per Mr. Chief Justice Groner.

Dated May 1, 1944.

[fol. 35] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed May 9, 1944

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above entitled cause, and include therein the following:

1. Appendix to the main brief of the appellant.
2. Opinion of the Court dated May 1, 1944.
3. Final judgment.

4. This designation.
6. Clerk's Certificate.

Geo. C. Gertman, Attorney for Appellant.

Service of copy of the foregoing designation of record acknowledged by appellee this 9th day of May, 1944.

Charles B. Murray Asst. U. S. Att'y, of Counsel for Appellee.

[fol. 36] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 37] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1944

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Murphy took no part in the consideration or decision of this application.

Endorsed on cover: File No. 48,614. U. S. Court of Appeals, District of Columbia. Term No. 161. National Metropolitan Bank, Petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed June 14, 1944. Term No. 161, O. T., 1944.